

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SHELTON O'GUYNN JR.,
Petitioner.

No. 2 CA-CR 2015-0423-PR
Filed December 10, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR2010144624003SE
The Honorable James T. Blomo, Judge

REVIEW GRANTED; RELIEF DENIED

Shelton O'Guynn Jr., Douglas
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 Shelton O'Guynn Jr. petitions for review of the trial court's summary dismissal of his successive, pro se petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, but we deny relief.

¶2 In 2011, O'Guynn pleaded guilty to two counts of kidnapping, one of them a dangerous felony, and was sentenced to a fourteen-year prison term to be followed by a four-year term of probation. O'Guynn timely initiated an of-right post-conviction proceeding in which he alleged counsel had rendered ineffective assistance by being "in-cooperative, non-compliant, and un-helpful" throughout his representation of O'Guynn, by failing to request a bond reduction hearing, and by failing to "cooperate with [O'Guynn's] parents to facilitate assistance of his defense." The trial court summarily dismissed the petition and, after review, this court denied relief from that ruling. *State v. O'Guynn*, 2 CA-CR 2013-0460-PR (memorandum decision filed Jan. 14, 2014).

¶3 In December 2013, O'Guynn filed a successive notice of post-conviction relief in which he alleged that counsel had been ineffective in failing to inform him of an earlier, more lenient plea offer the state had made "prior to his scheduled preliminary hearing," and that he would have accepted the earlier offer had he known of it. O'Guynn checked boxes on his notice form to indicate his claim was based on "[n]ewly discovered material facts . . . which probably would have changed the verdict or sentence," see Ariz. R. Crim. P. 32.1(e), or "a significant change in the law that would probably overturn the conviction or sentence," see Ariz. R. Crim. P. 32.1(g). The trial court dismissed the notice, finding O'Guynn did

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“not cite any case law or new facts,” but raised a claim “more appropriately analyzed pursuant to Ariz. R. Crim. P. 32.1(a)” – a claim that may not be raised in an untimely or successive petition. *See* Ariz. R. Crim. P. 32.2(a), (b), and 32.4(a).

¶4 O'Guynn then filed, in this court, a “Motion Requesting for Special Action” review of the trial court’s ruling “under [Rule] 31.19(a), [Ariz. R. Crim. P.],” which we construe as a petition for review pursuant to Rule 32.9. In it, O'Guynn argues that “there are grounds for an evidentiary hearing so that additional information can be provided.”¹

¶5 We review a trial court’s ruling in a post-conviction relief proceeding for an abuse of discretion, *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006), and we find none here. A claim based on “newly discovered material facts,” under Rule 32.1(e), or on “a significant change in the law,” under Rule 32.1(g), may be raised in an untimely proceeding like this one. *See* Ariz. R. Crim. P. 32.4(a). But to avoid summary dismissal, a defendant must “set forth,” in his notice of post-conviction relief, “meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b). O'Guynn’s notice did not meet this requirement.

¶6 As the trial court observed, the notice did not identify any change in the law that might apply to O'Guynn’s case. It did not set forth any factual basis for O'Guynn’s allegation that counsel

¹O'Guynn also argues that “the court cannot find beyond a reasonable doubt that the prosecutor’s improper vouching had anything other than a prejudicial effect” on his case. But his notice of post-conviction relief does not include a claim based on “improper vouching” by the prosecutor, and only “issues which were decided by the trial court” are properly before us on review. Ariz. R. Crim. P. 32.9(c)(1)(ii).

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failed to disclose an earlier plea offer,² any reason such a factual basis could be considered “newly discovered,” or why the issue could not have been raised in O’Guynn’s first Rule 32 proceeding. *Cf. State v. Donald*, 198 Ariz. 406, ¶ 17, 10 P.3d 1193, 1200 (App. 2000) (to “achieve a hearing on such a claim, a defendant must present more than a conclusory assertion that counsel failed to adequately communicate the plea offer”). In light of these deficiencies, the trial court did not abuse its discretion in summarily dismissing O’Guynn’s untimely, successive notice. *See Ariz. R. Crim. P. 32.2(b)*.

¶7 Accordingly, although we grant review, we deny relief.

²Based on the record before us, the state first extended a plea offer on March 8, 2011, and it contained the same terms O’Guynn accepted in the plea agreement he entered on March 22, 2011.